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No. 469

In The Supreme Court of the United States

OCTOBER TERM 1962

UNITED STATES OF AMERICA
FOR THE USE AND BENEFIT OF
HENRY J. LARKIN, d/b/a LARKIN COMPANY
Plaintiff Appellant,

v.

PLATT CONTRACTING CO. INC.
CONTINENTAL CASUALTY COMPANY and
AMERICAN EMPLOYERS INSURANCE COMPANY
Defendant, Appellee.

Petition for a Writ of Certiorari to the United States Court of Appeals for the First Circuit

HENRY J. LARKIN, *pro se*
Plainfield, Conn.

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HENRY J. LARKIN, *pro se*
Plainfield, Conn.

United States of America for the Use and Benefit of Henry J. Larkin d/b/a Larkin Company, petitions for a Writ of Certiorari to review the judgment of the Court of Appeals for the First Circuit entered in this case on July 5, 1962.

OPINION BELOW

The court of appeals rendered an opinion. Its judgment is set forth in Appendix A.

JURISDICTION

The judgment of the court of appeals was entered on July 5, 1962. The jurisdiction of this Court is invoked under 28 U.S.C. 1254 (1).

QUESTIONS PRESENTED

1. Whether the court below erred in forcing on the plaintiff an offer in compromise to accept less than the amount claimed due made in writing more than three years before trial that was never accepted, answered or acknowledged in any way, shape or manner, and was withdrawn by the plaintiff one week before losing his rights and entering suit.

2. Is the plaintiff appellant entitled to be paid for labor and material furnished and installed over and above the sub-contract and change orders.

3. Is the plaintiff appellant to be backcharged for exclusions set forth in his sub-contract.

4. Is the plaintiff appellant to be charged for payment on another sub-contract involving a supplementary agreement that was defaulted by the defendant.

5. Is the plaintiff appellant to be deprived of a chance to put into evidence a fair value or a quantum meruit claim when the sub-contract and change orders were so extensive and radical that the plaintiff appellant was compelled to perform a sub-contract that was materially different from the one he executed and was not bound by the adjusted sub-contract price.

6. Is the plaintiff appellant to be deprived of the right to have an attorney fill in offers of proof when the attorney entered the case on the fourth day of trial, that was missed by the plaintiff appellant in the first three days of trial putting on his own case when the District Court Judge had given the attorney permission to do so.

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16 Did the court err as a matter of law in refusing to hold that the appellant's objections to the Master's report were proper.

17. Did the court err as a matter of law in refusing to hold that the appellant's motion to recommit was proper.

18. Did the court err as a matter of law in refusing to hold the appellant's motion to consolidate was proper.

19. Did the court err in denying the relief demanded for in the amended complaint herein.

STATUTE INVOLVED

U.S.C. Title 40. Section 270a, b, c, d, provides for payment of persons furnishing labor and material.

§ 270b. Same; rights of persons furnishing labor or material

(a). Every person who has furnished labor or material in the prosecution of the work provided for in such contract, in respect of which a payment bond is furnished under section 270a of this title and who *has not* been paid in full therefor before the expiration of a period of ninety days after the day on which the last of the labor was done or performed by him or material was furnished or supplied by him for which such claim is made, shall have the right to sue on such payment bond for the amount, or the balance thereof, unpaid at the time of institutions of such suit and to prosecute said action to final execution and judgment for the *sum or sums justly due him*: *Provided, however*, That any person having direct contractual relationship with a subcontractor but no contractual relationship express or implied with the contractor furnishing said payment bond shall have a right of action upon the said payment bond upon giving written notice to said contractor within ninety days from the date on which such person did or performed the last of the labor or furnished or supplied the last of the material *for which such claim is made*, stating with substantial accuracy the amount claimed and the name of the party to whom the material was furnished or supplied or for whom the labor was done or performed. Such notice shall be served by mailing the same by registered mail, postage prepaid, in an envelop addressed to the contractor at any place he maintains an office or conducts his business, or his residence, or in any manner in which the United States marshal of the district in which the public improvement is situated is authorized by law to serve summons.

(b) Every suit instituted under this section shall be brought in the Name of the United States for the use of the person suing, in the United States District Court for any district in which the contract was to be performed and executed and not elsewhere, irrespective of the amount in controversy in such suit, but no such suit shall be commenced after the expiration of one year after the date of final settlement of such contract. The United States shall not be liable for the payment of any costs or expenses of any such suit. Aug. 24, 1935, c. 642, § 2, 49 Stat. 794.

STATEMENT OF THE CASE

This is an appeal from the U.S. First Circuit Court of Appeals judgement in favor of the appellant brought under U.S. Code, Title 40, Section 270b: to recover increased costs for furnishing and installing labor and material in a United States of America owned Air Force Research Center due to extensive and radical change orders with the result that the appellant was compelled to perform on a sub contract that was materially different from the one that he executed.

The first cause of action is on the sub-contract, change orders and additional labor and material furnished and installed not covered by sub-contract or change orders, covered by the original complaint.

The second cause of action that the lower court refused to hear, is a charge for a fair value of all the work done without regard to the sub-contract or change orders and as covered by the amended complaint.

THE FACTS

On December 13, 1954, Platt Contracting Co., Inc., hereinafter referred to as Platt, entered into a contract with the United States of America for the construction of Building F, at the Bedford Research Center at Bedford, Massachusetts for an agreed price of $1,323,000.00. Pursuant to the terms of the contract, Platt furnished two payment bonds, each in the sum of $254,600, the sureties being the defendants, Continental Casualty Company and American Employers Insurance Company. Later changes were made in the work and the contract price of the prime contract was increased to $1,662,968.21.

On February 17, 1955, Larkin entered into a subcontract with Platt under which Larkin was to perform part of the work for an agreed price of $213,000.00. Appellant contends that the change orders effected his part of the work so as to increase the cost of performing the same in the amount of $113,232.90 and that he was required by Platt to perform additional work of the value of $4,665.50 and that he suffered damages in the amount of $3,060.00 as a results of delays by virtue of a stop order issued by the Air Force and extended to Larkin by Platt so that he was entitled to recover the difference between $333,958.40, the total of the above claims, less $222,522.00 paid on account, leaving a balance of $111,436.40 unpaid for the work performed by him.

All of the work called for by the prime contract was completed and accepted by the government and Platt was paid in full, on May 24, 1957.

Shortly thereafter Platt laid off all their help, closed their office and stopped doing business leaving appellant sub-contractor unpaid among others. The principal officers left this State at this time. This action is primarily against the apellee surety.

On May 18, 1957, Larkin demanded payment of the balance due him for the performance of the contract and the parties being unable to come to an agreement as to the amount due Larkin, Larkin, on May 21, 1958 brought this action to recover an alleged balance of $111,436.45 due on the contract. The matter was referred to a Master, who after hearings recommended a verdict in favor of Larkin in the amount of $6,051.64, with interest from May 21, 1958, when the action was instituted.

The basic of this determination is set forth in the Master's report. The details of plaintiff's claim as stated in the report has already been set forth. The defendants claim was that the balance remaining unpaid to Larkin, as of May 18, 1957 amounted to $76,217.47 before deductions for back charges. The difference between the adjusted contract price as set forth by defendants and the amount claimed by Larkin amounted to $23,354.08.

In the letter dated May 23, 1957, sent by Platt to Larkin in which he stated that the balance remaining unpaid to Larkin was $76,217.47, before any back charges were made and deducted therefrom the sum of $14,135.56 as back charges, thus reducing the balance due Larkin to $62,018.91. The letter also listed four claims in the amount of $10,002.49 and the amount of this claim would increase the balance to $72,084.40.

On August 20, 1957, Platt addressed a letter to the attorney for the surety companies, which showed a balance of $62,081.91 and credited Larkin with $325.10 for gas valves and deducted $9,699.73, the amount paid to one of Larkin's subcontractors. This reflected a balance of $52,716.28. By the same letter Platt gave Larkin credit for two claims in the amount of $4,573.95 so that the adjusted balance due Larkin was fixed at $57,290.23.

On January 20, 1958, Larkin sent a letter to John Blakeney, the attorney for the Continental Casualty Company, in which he agreed to the settlement set forth in Platt's letter of May 23, 1957 and as supplemented by Platt's letter under date of August 20, 1957, of which he had received a copy, with one exception, the payment of $11,864.85 to the amount paid in a settlement of a claim. This modified offer by Larkin was never accepted and in fact was subsequently withdrawn. It is common knowledge that contractors will generally accept a lesser amount than that claimed due to avoid the cost of litigation. Despite the fact that the counter offer by Larkin was never accepted, the Master accepted, the amount offered in settlement as the basis of the amount due Larkin. The Master also disregarded the amount of $4,573.95, that Platt admitted to be due Larkin for extra work, the basis for such rejection being: "I find that by his failure to cooperate in rendering adequate documentary support to these claims so that Platt could collect for them from the United States Army under its contracts, as extras, that he is estopped from asserting them as a claim at this late juncture." The Master was clearly in error in coming to this conclusion because: (1) Plaintiff claims he did cooperate with Platt in pressing his claim against the government and (2) that his cooperation in pressing Platt's claim is not material to

his right to recover under the subcontract. The fact that the work in question was not covered by the subcontract is the only matter involved in the issue and the fact that such work was included in the prime contract does not bar the right of plaintiff to recover under the subcontract.

Larkin objected to the allowance of $11,864.85 paid by Platt to Larkin's subcontractor on another sub-contract. At that time there was a balance of $59,000 due Larkin on that other sub-contract. On July 28, 1955, Larkin and Platt entered into an agreement whereby Larkin agreed to pay Platt the above sum of $11,864.85, provided that Platt paid the same. This agreement also provided. "*Platt, however, shall cooperate with Larkin in proving his said claims, and in effecting collection thereof, and payment thereof against the New Bedford Housing Authority.* * *"

Under the terms of the said contract, Larkin could make no direct claim against the Housing Authority. The work in question was considered extra work not called for by the prime contract so the obligation under the above mentioned agreement between Larkin and Platt required Platt to institute and prosecute a suit for said extra work against the Housing Authority and if he obtained a recovery to turn same over to Larkin. Platt instituted the suit but failed to proceed with the litigation. Since Platt failed to proceed with his obligations under the contract, there is no reason why Larkin should be held liable for his part of it. It will be noted that the Master denied Larkin credit for $4,573.95 that Platt admitted was due Larkin, holding he was estopped from making such a claim because Platt contended that Larkin failed to cooperate with Platt in prosecuting such claim against the government. It is paradoxical that the court allowed a backcharge of $11,864.85 against Larkin in spite of the fact that Platt failed to cooperate in prosecuting claim of Larkin's on the other sub-contract.

Moreover, Larkin credited Platt with the $11,864.85 on the balance due him on the other sub-contract and in the present action, the Master allowed Platt's sureties to charge-back the same amount on the present paid so that the Master is making Larkin pay two times for the amount paid to Larkin's subcontractors on another sub-contract.

The Master refused to allowed Larkin to put this evidence in on redirect examination after it was introduced by appellee Surety when appellant was on cross examination.

The subcontract provided: "Not included by this subcontractor: Excavation; Backfilling; Pumping; Concrete or masonry mats or foundations; drainage structures; painting or secondary electrical circuits." Despite this provision of the contract, the Master allowed defendants back charges in the amount of $14,135.56 for items of excavating, backfilling, masonry and carpentry not covered by subcontract. Plaintiff admits that the amount $309.10 was covered by the subcontract.

REASONS FOR GRANTING THE WRIT

1. The court below clearly erred in forcing on the plaintiff an offer in compromise to accept less than the amount claimed due, made in writing more than 3 years before trial that was never accepted, answered or acknowledged in any way shape or manner and was withdrawn by the plaintiff one week before losing his rights and entering suit.

2. The District Court below erred in refusing to allow the plaintiff to put in evidence the labor and material furnished and installed and further refused to allow any of the amount claimed for it, that was confirmed by the Appellate Court.

CONCLUSION

This petition for a writ of certiorari should be granted.

Respectfully submitted,

HENRY J. LARKIN, *pro se*
Plaintiff Appellant

APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

No. 5961.

UNITED STATES OF AMERICA
FOR THE USE AND BENEFIT OF
HENRY J. LARKIN, d b a LARKIN COMPANY
PLAINTIFF, APPELLANT

v.

PLATT CONTRACTING CO., INC.,
CONTINENTAL CASUALTY COMPANY and
AMERICAN EMPLOYERS INSURANCE COMPANY
DEFENDANTS, APPELLEES

Appeal from the United States District Court
for the District of Massachusetts

Before WOODBURY, *Chief Judge*, and HARTIGAN and ALDRICH, *Circuit Judges*.

Henry J. Larkin on brief pro se.

John W. Bowdoy and *Skeheny & Flaherty* on brief for Platt Contracting Co. Inc., Continental Casualty Company and American Employers Insurance Company, appellees.

OPINION OF THE COURT
July 5, 1962

PER CURIAM. Appellant Larkin, a sub-contractor, filed a complaint under the Miller Act, 40 U.S.C.A. §§270a-d, in May 1958, when he was represented by counsel, against appellees Platt Contracting Company, a principal contractor, and its sureties, seeking a balance allegedly due him in the amount of $111,436.40. Subsequently, appearing pro se, he filed a motion to amend, requesting the "fair value for work done" in the net amount of $536,873.85, which motion the court allowed. He also filed a belated jury claim, which was denied. The case was referred to a master, who found for Larkin in the amount of $6,051.64. Larkin's objections to the master's report were overruled, the report was confirmed, and judgment was entered thereon, from which he now appeals.

At the threshhold of the appeal is the question whether the master erred, as matter of law, in interpreting a letter from Larkin to Platt as an acceptance of the correctness of an accounting rather than an offer of compromise. On May 23, 1957 Platt wrote Larkin respecting "you[r] claim [of]

a balance due of $111,436.40. Your figures are incorrect in practically every particular. We list, herewith, an analysis of your account as it stands." There followed a detailed statement of account. So far as Platt was concerned this was clearly stated as what it considered to be due, and not in any way as a compromise suggestion. On January 20, 1958 Larkin wrote to Platt's and the surety company's counsel, "We have decided to accept a settlement based on Platt's letter to us of May 23, 1957 . . . with one exception." There followed a discussion of one item in Platt's letter of May 23, which was a payment made by Platt to an alleged creditor of Larkin's. Larkin objected that this had been paid "before the other contract was settled and was not a payment received by us." Larkin contends his undertaking to accept this "settlement" was in the nature of a compromise offer. The master treated it as an admission that Platt's accounting was correct except as to the one rejected matter.

The word "settlement," sometimes a word of art in legal circles as denoting a compromise, has other well-recognized meanings. Accounts are "settled." When all obligations of both parties under a contract have been finally disposed of, it is common to speak of the contract as being "settled." Indeed, Larkin used the word in this manner in the second quoted part of his letter. The master was warranted in finding that his earlier use of that word was in the sense of an acceptance of figures as distinguished from a proposal of compromise.

We have reviewed the master's report in the light of the testimony and exhibits. We find no error. Larkin's claim to recover for all work and materials on the basis of a *quantum meruit* in disregard of the contract is contrary to established principles. *Jefferson Construction Co.* v. *United States*, 1 Cir., 1960, 283 F.2d 265, *cert. den.* 365 U.S. 835.

Judgment will be entered affirming the judgment of the District Court.

APPENDIX B

UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

No. 5961.

UNITED STATES OF AMERICA
FOR THE USE AND BENEFIT OF
HENRY J. LARKIN, d/b/a LARKIN COMPANY
PLAINTIFF, APPELLANT

v.

PLATT CONTRACTING CO., INC., ET AL
DEFENDANTS, APPELLEES

JUDGMENT

July 5, 1962

This cause came on to be heard on appeal from the United States District Court for the District of Massachusetts, and was argued by counsel.

Upon consideration whereof, It is now here ordered, adjudged and decreed as follows: The judgment of the District Court is affirmed.

By the Court:

ROBERT A. STINCHFIELD
Clerk

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Supreme Court of the United States.

OCTOBER TERM, 1962.

No. 469.

UNITED STATES OF AMERICA FOR THE USE AND BENEFIT OF HENRY J. LARKIN, D/B/A LARKIN COMPANY, *Petitioner,*

v.

PLATT CONTRACTING CO. INC., CONTINENTAL CASUALTY COMPANY AND AMERICAN EMPLOYERS INSURANCE COMPANY, *Respondents.*

BRIEF FOR RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

The respondents oppose the petition filed herein to review the judgment of the United States Court of Appeals for the First Circuit, entered in the above-entitled case on July 5, 1962, and pray that the petition be dismissed and certiorari denied.

Opinion Below.

The opinion of the Court of Appeals for the First Circuit is reported at 306 F. 2d 724.

Jurisdiction.

The complaint alleges a cause of action under the Miller Act, 40 U.S.C. §§ 270a-d. Jurisdiction is conferred upon the United States District Court in actions instituted pursuant to that statute.

Counter-Statement of the Questions Presented.

The statement of "Questions Presented" in the petition is an admixture of assumptions, argument and gratuitous and self-serving statements. They are the same "questions" as those argued before the Court of Appeals. It would serve no useful purpose to discuss them, since in large measure they have not been cast in intelligible form and they present abstractions totally unrelated to the basic and substantial issues presented for determination to the master and thereafter to the trial judge. The record on appeal to the Court of Appeals presented this question: "Were the findings of fact of the trial Court clearly erroneous?"

Counter-Statement of the Case.

The complaint in this case was brought under the Miller Act (40 U.S.C. § 270b) upon the standard form of Payment Bond executed by the respondent Platt Contracting Co. Inc., hereinafter called "Platt," as principal, and the respondents Continental Casualty Company and American Employers Insurance Company as sureties, hereinafter called "the sureties."

Platt was the prime contractor under a contract with the United States dated December 13, 1954, identified as contract DA-19-016-ENG. 3524, for the construction of Build-

ing F of the Geophysics Laboratory at the Bedford Research Center in the Town of Bedford, Massachusetts, for the sum of $1,323,000, later increased by additions to $1,662,968.21. In connection therewith the sureties executed and delivered to the United States the Standard Performance and Payment Bonds. The Payment Bond, upon which this suit is brought, was dated December 13, 1954, and was in the penal sum of $529,200.

On February 17, 1955, Larkin entered into a sub-contract with Platt to furnish all materials and perform all labor and complete all of the work itemized in the agreement in accordance with the general conditions of the general contract between the United States and Platt, and the plans, drawings and specifications prepared by the Department of the Army and Shepley, Bullfinch, Richardson and Abbott (R. 43-46).

The work to be done by Larkin consisted of plumbing; gas fitting; steam-heating system; chilled-water distribution in building; mechanical exhaust system; mechanical ventilating system; air-conditioning system; exterior underground sanitary and drainage; exterior underground steam distribution; exterior underground chilled-water distribution; modifications to existing buildings covered by the above items; to include all transite board and ducts; unistrut or equal hangars and inserts in concrete; manhole fittings as required "for the above referenced work items." During the progress of the work certain modifications were made in this work and change orders were issued thereon, resulting in increases to Larkin's contract price.

In paragraph 10 of his complaint filed on May 21, 1958, Larkin stated that, "Beginning after February 17, 1955, and prior to May 18, 1957, the plaintiff performed all of its obligations under the terms of the sub-contract and duly authorized change orders both written and oral."

In paragraph 11 he recited that "The defendant Platt has paid to the plaintiff, on account of the plaintiff's performance of the said subcontract and said changes thereto, the sum of $222,522.00. There remains unpaid the sum of $111,436.40 which is due and owing to the plaintiff from the defendant Platt, together with interest from May 18, 1957 on which date demand for payment was duly made."

In paragraph 12 Larkin states that "This action is brought more than ninety days since the above described labor and materials were furnished by the plaintiff to the defendant, Platt, and prior to the expiration of one year from the date of final settlement of the said prime contract," which date is alleged to be May 24, 1957.

The complaint was drawn by George Foley, Esq., and Remsen M. Kinne, III, Esq., of the firm of Hale and Dorr (R. 7-10).

On September 28, 1960, Larkin filed a motion to amend wherein he "requests that he be paid a fair value for the work done in view of the defendant's answer to the original Complaint." He also stated therein that the "Defendants" prevented him from completing his contract "by paying the final bills on his subcontract because they did not pay him in accordance with the terms thereof," and claimed that he was entitled to a judgment of $536,873.85, with interest to date. He further included in the motion a demand for trial by jury (R. 13). The motion to amend was allowed except as to the jury claim, which was denied (R. 3). On October 17, 1960, the Court appointed a master to hear this case in accordance with the provisions of Rule 53(e) of the Federal Rules of Civil Procedure, pursuant to the agreement of the parties to such reference (R. 3). The master's report was filed on October 19, 1961 (R. 16-24). Larkin filed objections thereto (R. 25-26), which were overruled after hearing (R. 29), as was his motion to recommit (R. 27) and a "motion to consolidate" (R. 28), which related to a suit he had recently brought.

On December 6, 1961, Judge Ford entered an order confirming the master's report on the motion of the respondents herein, accepting and adopting the master's findings of fact and overruling Larkin's objections. The judge ordered judgment for the plaintiff in the amount of $6,051.64, with interest from May 21, 1958, without costs. Larkin appealed from this judgment.

Argument.

A.

The Findings of the Trial Court were Clearly Correct.

Rule 52(a) of the Rules of Civil Procedure provides in part that, in actions tried without a jury, "Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses," and "The findings of a master, to the extent that the court adopts them, shall be considered as the findings of the court."

On motion of these respondents the trial judge confirmed the master's report in the following language: "The Master's Findings of Fact are accepted and adopted by this Court. The objections to the Master's Report, filed by the plaintiff, are overruled" (R. 29).

The master's findings of fact therefore were the findings of the trial judge on the record upon appeal to the Court of Appeals.

Subdivision (a) of Rule 52, providing that findings of fact shall not be set aside unless clearly erroneous, in substance confirms and continues the earlier practice which obtained in equity and makes it applicable to all trials before a judge.

United States v. *Aluminum Co. of America*, 148 F. 2d 416 (C.C.A. 2d, 1945).

The findings of a master, upon adoption by the trial court, are conclusive and binding upon the appellate court "unless clearly erroneous." The cases are legion in which this principle has been stated and affirmed, and it would serve no useful purpose to multiply citations on this proposition. Illustrative cases follow:

Crimmins v. *Woodson*, 177 F. 2d 788 (C.A. 1st, 1949).

Sachs v. *Ohio National Life Insurance Co.*, 148 F. 2d 128 (C.C.A. 7th, 1945); cert. den. 326 U.S. 753.

The evidence offered in this case consisted largely of the testimony of Larkin personally. He acted in the dual capacity of counsel and witness. In its opinion the Court of Appeals stated: "We have reviewed the Master's Report in the light of the testimony and exhibits. We find no error."

B.

The contention of the petitioner that the master was in error in accepting a letter dated May 23, 1957, from respondent Platt to Larkin as an accounting rather than as "an offer of compromise" was considered by the Court of Appeals and found to be without merit. To the extent that the master's finding was a determination of fact which rested upon this letter and the testimony of Larkin and Hurwitz, accountant for the respondent Platt, the master's finding of fact as adopted by the trial court was final. In any event, the Court of Appeals had before it the testimony and exhibits and it too could draw the same conclusion therefrom as that arrived at by the master. Since the master's interpretation of the letter and his finding that it was not an offer of compromise but a statement of ac-

count by Platt according to its records and as testified to by Hurwitz, its accountant, there is no need to discuss the law relating to admissibility in evidence of offers of compromise.

On page 8 of his petition the plaintiff assigns his "reasons for granting the writ." We have already dealt with "reason" number 1. "Reason" number 2 alleges that "the District Court was in error in refusing to allow the plaintiff to put in evidence of the value of the labor and materials furnished," this being the so-called claim in "quantum meruit." The latter claim has been summarily dealt with by the Court of Appeals in these words: "Larkin's claim to recover for all work and materials on the basis of a quantum meruit in disregard of the contract is contrary to established principles."

> *Jefferson Construction Co.* v. *United States* (C.A. 1st, 1960), 283 F. 2d 265; cert. den. 365 U.S. 835.

The Petition should be Denied.

The respondents assert that this petition is without merit and should be denied. No question has been presented involving an interpretation of the statute under which the complaint was brought (Miller Act, 40 U.S.C. §§ 270a-d); the decision of the Court of Appeals is not shown to be in conflict with the decision of another Court of Appeals on the same matter; no important question of local law has been decided in a way as to probably bring it into conflict with applicable local decisions and there is no conflict between the decision herein and other applicable decisions of this Court. The petitioner has had a full and fair trial before a master whose findings were reviewed by the trial court, and again considered by the Appellate

Court. There is nothing in the entire record to indicate that there was any departure from the accepted and usual course of judicial proceedings during trial or upon review. The decision of the Court of Appeals with reference to the alleged "offer of compromise" was resolved as at common law and is in consonance with reason and equity and does not call for further examination by this Court. The petitioner's complaint that he was entitled to put in evidence the fair value of his labor and materials in the light of the allegations of his complaint that he had fully completed his contract does not merit any consideration.

Jefferson Construction Co. v. *United States* (C.A. 1st, 1960), 283 F. 2d 265; cert. den. 365 U.S. 835.

The respondents say that no basis exists for the grant of a writ of certiorari under the established rules of this Court, and request that the petition be denied.

Respectfully submitted,

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